

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****INCOME TAX REFERENCE No. 336 of 1992****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE****HONOURABLE MR.JUSTICE K.A.PUJ**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
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**COMMISSIONER OF INCOME TAX - Applicant(s)**

**Versus**

**MALLIKA SARABHAI TRUST NO.31 - Respondent(s)**

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**Appearance :**

MR MANISH R BHATT for Applicant(s) : 1,

MR BD KARIA for MR RK PATEL for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**

**and**

**HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 01/03/2006**

**ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)**

At the instance of the revenue, the following question has been referred to this court for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as '**the Act**') by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A'.

"Whether the Appellate Tribunal is right in law and on facts in holding that when the assessee received shares, debentures and bonds of amalgamated companies, there was no transfer under section 2(47) of the Income-tax Act and consequently no capital gains tax could be charged?"

2. The learned advocates appearing for the parties point out that in view of the decision of this court in CIT v. Leena Sarabhai (N.CH), (1996) 221 ITR 520 declining to answer the questions referred at the instance of the revenue on the ground that the position in such type of cases is that there is no transfer of capital assets within the meaning of Section 2(47) of the Income-tax Act, 1961, it is not necessary for the court to answer the question referred in the present reference also.

3. We accordingly decline to answer the question referred for our opinion in this reference.

The reference stands disposed of accordingly with no order as to costs.

(Anil R. Dave, J.)

(K.A. Puj, J.)

(hn)